

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
	§	
v.	§	No. 1:19-CR-00213-RP
	§	
(1) DONOVAN SMITH,	§	
<i>Defendant</i>	§	

ORDER

Before the Court is Defendant Donovan Smith’s stand-by counsel Tracy Cluck’s Motion to Withdraw and Appoint Counsel, Dkt. 329. The District Court appointed Mr. Cluck to serve as stand-by counsel for Defendant, who has chosen to represent himself. *See* Dkt. 129. Defendant recently pleaded guilty, Dkt. 256, and the District Court entered judgment on November 18, 2022, Dkt. 319. Twelve days later, Defendant filed a pro se notice of appeal, Dkt. 326, and the U.S. Court of Appeals for the Fifth Circuit then docketed the case, *see United States v. Smith*, No. 22-51047 (5th Cir.). Defendant’s notice of appeal prompted his stand-by counsel to file the present motion, as he is not currently admitted to practice in the Fifth Circuit and will thus be unable to assist Defendant in his appeal.

The District Court referred the motion to the undersigned, Dkt.330, and the undersigned set the motion for hearing, Dkt. 331, which was held on December 8, 2022. At the hearing, Defendant confirmed on the record that he does wish to continue to have stand-by counsel appointed to assist him with his appeal. Based on the

foregoing, the Court finds that the motion to withdraw and appoint new appellate counsel should be granted.

Accordingly, the Court **GRANTS** counsel's motion, Dkt. 329, and **ORDERS** that Tracy Cluck is permitted to **WITHDRAW** as stand-by counsel for Defendant in the District Court. The Court **APPOINTS** Phillip Lynch, Law Offices of Phil Lynch, 17503 La Cantera Parkway, Suite 104-623, San Antonio, TX 78257, (210) 378-3114, to serve as stand-by counsel for Defendant on appeal.

The Court **FURTHER ORDERS** Mr. Cluck meet with Mr. Lynch at the earliest opportunity to give Mr. Lynch a copy of the file and bring him up to date with regard to the representation of Defendant. Thereafter, Mr. Cluck has no further responsibilities in this case.

SIGNED December 8, 2022.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE